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APR 15 2005

OFFICE OF PETITIONS

In re Application of :
Beth Anne Piper :
Application No. 09/460,920 : ON PETITION
Filed: December 14, 1999 :
Attorney Docket No. LA0046A :
:

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed November 18, 2004, to revive the above-identified application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

This application became abandoned for failure to timely pay the issue fee and publication fee, if applicable, on or before May 12, 2003. Accordingly, this application became abandoned on May 13, 2003.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed.
In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application, abandoned or lapsed for failure to pay

the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy requirement (1) above.

Please note MPEP 706.07(h):

A. Treatment of Improper RCE

If one or more conditions for filing an RCE have not been satisfied, applicant will be so notified. Generally, a "Notice of Improper Request for Continued Examination (RCE)," Form PTO-2051, will be mailed to applicant. An *improper RCE will not operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application.* (Emphasis added).

As such, the \$1400.00 issue fee and \$300.00 publication must be submitted in order to revive the above-identified application. Neither fee has been submitted, nor is an authorization to change said fees found with the instant petition.

Accordingly, the petition must be dismissed.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22313

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries should be directed to the undersigned at
(571) 272-3228.



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